IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 323 of 2003
with
CRIMINAL REVISION APPLICATION No 324 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHYABHAI MADHAVBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 323 of 2003
MR CHETAN K PANDYA for Petitioner No. 1-4
MS MANISH L. SHAH Ld. APP for Respondent No. 1
..... for Respondent No. 2-3

2. Criminal Revision Application No. 324 of 2003
MR CHETAN K PANDYA for petitioner No. 1-4
MR IM PANDYA Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 08/07/2003

COMMON ORAL JUDGEMENT

Heard ld. advocates appearing for the parties at length. In both the above revision applications, common question of law has arisen, therefore, both were heard together and are decided by this common judgment.

The facts of Criminal Revision Application No. 323 of 2003 denotes that respondent no. 2 herein filed a complaint before ld. Sessions Judge, at Surat for the offences under sec. 406, 420, 504, 506(2) and 114 of Indian Penal Code as well as under sec. 3(10) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, against the present petitioners and respondent no. 3 herein. The complaint came to be filed on 4.4.1997. Ld. Sessions Judge, Surat on the same day forwarded the said complaint to the police for investigation under sec. 156(3) of the Code of Criminal Procedure. In pursuance of the said investigation, the police submitted a report to the ld. Sessions Judge with a request to grant C-Summary. The complainant was heard and ld. Sessions Judge after hearing the complainant rejected the request of the police for grant of C-Summary and issued summons to the accused vide his order dated 13.4.1998 which was duly served upon the accused-petitioners herein. It appears that thereafter charge came to be framed by the ld. Sessions Judge on 5.12.2002 and after framing of the charge, the evidence of the complainant was recorded and during recording of the evidence of the complainant, the present petitioners filed an application at ex. 14 stating that in this case complaint came to be filed by the complainant directly to the court of Sessions and according to law, the Court of Sessions was not competent to take cognizance of the offence under the other law as well as under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 unless a case is committed to the Court of Sessions by the committing Magistrate. It was, therefore, contended that illegality had been committed and the proceedings till recording of the evidence of the complainant was required to be quashed in view of the fact that the Court of Sessions was not competent to take cognizance of the offence complained of directly. The said application came to be dismissed by the ld. Addl. Sessions Judge, Vyara vide his order dated 2.6.2003. While in Criminal Revision Application NO. 324 of 2003, a complaint filed by respondent no. 2 - Dahyabhai Lallubhai Garasiya before the Police Sub Inspector Mahuva Police Station, District Surat being II CR No. 38/99 for the offences under sec. 323, 504, 506(2) read with section 114 of Indian Penal Code as well as for the offences under sec. 3 (5) and 3(10) of the Schedule

Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. A charge sheet came to be filed by the police before the ld. Sessions Judge, Surat directly, which was registered as Sessions Case No. 39 of 1999. Charge came to be framed against the present petitioners on 15.1.2001. Evidence was recorded from 26.2.2001 and two witnesses have been examined by the prosecution and at that stage, the present petitioners preferred an application at exh. 39 stating that even for the offence committed under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, the ld. Sessions Judge was not competent to take cognizance of such offence directly unless a case is committed to it through the competent Court of Magistrate. It was urged that since the charge sheet is directly submitted to the Court of Sessions in this case and since the Sessions Court took cognizance of the offence for which the Court of Sessions was not competent, all the proceedings thereafter was an illegality and the proceedings were required to be quashed. The ld. Sessions Judge, rejected the said application exh. 39 also vide his order dated 2.6.2003 and hence, Criminal Revision Application No. 324 of 2003.

Ld. advocate in both the revision applications Mr. CK Pandya vehemently placed reliance upon the two decisions, one of the Apex Court and one of this Court in the matter of Gangula Ashok and Anr. vs. State of M.P., as reported in (2000)2 SCC p. 504 and the decision of this court in the matter of Ram Shashtri & Anr. vs. State of Gujarat & Anr., as reported in 2002(2) GCD 1185 (Guj.) Relying on these two decisions, it was vehemently urged that filing a complaint directly before the court of Sessions i.e. Special Judge is an illegality and holding an enquiry in pursuance of that complaint is also an illegality. Issuance of process by the ld. Sessions Judge on filing of a private complaint, thus taking cognizance is also an illegality and must result in quashing of the whole subsequent proceedings in both the matters. It was urged that according to above two decisions, neither in the Act i.e. Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 nor in any other law, there is a provision by which Ld. Special Judge i.e. Ld. Sessions Judge under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 can take cognizance of an offence directly without the case being committed to it. If without committing of a case to the Court of Sessions or Special Judge, a cognizance is taken, then the same is an illegality. Illegality perpetuated if the matter is allowed to proceed further and even if reaches to the

stage of recording of evidence. It was contended that when this fact came to the knowledge of the accused, the accused filed the above said two applications at exh. 39 and exh. 40. It was contended that the ld. judge rejected both the above said application relying on a decision of the Apex Court in the matter of State of M.P. vs. Bhooraji and Ors., as reported in (2001)7 SCC p.679. It was contended that ld. trial judge has wrongly placed reliance on this decision and that was a case wherein after the whole trial was over, in an appeal, when a question was raised that the ld. Sessions Judge i.e. Special Judge was not competent to take cognizance directly without committing a case to the court of sessions for the offence under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. The Supreme court held that the objections ought to have been taken at the earlier stage and no useful purpose was to serve to order re-trial. It was urged that in this case the trial is still not over. Even in one case, the evidence of complainant is in progress and in the next, two witnesses of the prosecution have been examined. When this fact came to the knowledge of the accused, the above said applications exh. 39 and 40 were filed by the accused. It was contended that the Supreme court in the above said case in the matter of State of M.P. vs. Bhooraji (supra) made it clear that since the trial was in progress and till it was over, a full bench decision of the M.P. High Court in the matter of Anand Swaroop Tiwari vs. Ram Ratan Jatav, as reported in 1996 MPLJ 141, held the ground that sec. 193 of the Code of Criminal Procedure does not apply to proceedings under the (SC/ST) Act and committal orders are not required. Thereafter when that trial was over in the said case, the Supreme Court pronounced the decision in Gangula Ashok (supra) and the Supreme Court ruled out that trial was without jurisdiction inasmuch as the specified Court of Session did not acquire jurisdiction to take cognizance of and try the case, in absence of it being committed by a Magistrate, and therefore, as contended on behalf of ld. advocate for the petitioners, the fact of the case in the matter of State of M.P. vs. Bhooraji and the facts of present two cases are altogether different because in the case of State of M.P. vs. Bhooraji, the objection about taking cognizance when the Court was not competent to take cognizance had been taken at the stage when the trial was over and the appeal was pending, while in these two cases, the trials are still to be conducted and are in progress. In one case, the complainant is examined and her deposition is not over, while in the second case, two witnesses of the prosecution are examined. It was contended that therefore, the ratio of

the said decision of the Apex Court in the matter of State of M.P. vs. Bhooraji as has been made applicable by the ld. Magistrate would not be applicable to the case at hand. My attention was also drawn to para-7 of the decision of the Apex Court in the matter of State of M.P. vs. Bhooraji (supra) wherein the Apex Court observed that, "the accused did not raised any question, when they were heard at the time of framing the charge, that the court cannot proceed without committal made by a Magistrate. Nor did they raise such a plea at any stage either before or after the evidence was recorded by the trial court." Relying upon this observation, it was contended that it was within the right of the accused to raise the question at the stage as to the illegality committed by the Court of Sessions in taking the cognizance of the offence without committing the case to it. It was, therefore, argued that the order under challenge requires to be set aside or the law point involved in the matter is worth consideration and the matters be admitted.

True, it is that by the pronouncement of the Apex court in the case of Gangula Ashok (supra) it is amply clear that there is nothing in the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 that a special judge is empowered to take cognizance directly under the Act without the case committed to it by a Magistrate and the ratio of the decision of the Apex court in the said case has not been disturbed by the Apex Court in the matter of State of M.P. vs. Bhooraji (supra). True, it is, also that, it is an illegality, when court takes a cognizance of an offence and tries the same when by law the said Court is not empowered to take the cognizance. The question which requires to be considered in these two cases is the manner in which a Special Judge shall take cognizance of an offence under Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. The law is amply clear that Special Judge shall take the cognizance of the said offence only when the case is committed to it.

The important question which is seriously required to be considered is that at what stage such an objection should be raised by the party aggrieved and even when such objection is raised during trial what would be the effect of it in the fact of said case. This is more important in the present state of affairs where the docket explosion and delay in trial is daily occurrence in each court and we are almost crushed by arrears and back log. In the case of State of M.P. vs. Bhooraji (supra), the Apex Court made very important and

crucial observation and that is the ratio of the decision. It is important to note that the court of sessions which is a Special Court is not a court incompetent court for all purposes to take cognisance. The Special Judge i.e. Sessions Judge is otherwise empowered to try the offence under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. Albeit the law has provided the manner in which such Special Court is required to take cognisance, meaning thereby that the court of Special Judge is not altogether bereft of taking cognisance to try the case under the Schedule Caste and Schedule (Prevention of Atrocities) Act, 1989. Uncontroverted fact remains that the Ld. Sessions Judge took cognizance of such offence directly and without a committal proceedings by the competent Magistrate. When such a situation arises keeping in view the provision of sec. 465 of the Code of Criminal Procedure, the Supreme court in the matter of State of M.P. vs. Bhooraji (supra) ruled that such objections ought to have been taken by the accused at the earlier stage of the proceedings because the court which is otherwise competent to try the offence and which has commenced the trial without following the procedure as prescribed by the law and reached up to the stage where it would neither be advisable nor in the interest of justice to revert back to square one and to start afresh as to cause great hardship to the litigants and the courts as well. The Supreme Court in the case of State of M.P. vs. Bhooraji (supra), therefore, observed in para-8 of the decision as under:

> ".....The superior court which orders a de novo trial cannot afford to overlook the realities and the serious impact on the pending cases in trial courts which are crammed with dockets, and how much that order would inflict hardship on many innocent persons who once took all the trouble to reach the court and deposed their versions in the very same case. To them and the public the re-enactment of the whole labour might give the impression that law is more pedantic than pragmatic. Law is not an instrument to be used for inflicting sufferings on the people but for the process of justice dispensation."

In the above said process, therefore, the material issue which requires to be considered is in refusing de novo trial, what prejudice is likely to be caused to the accused or what advantage the accused would secure if de novo is ordered at certain stage to claim

fair trial. Had the objection been raised at the earliest opportunity even the illegality could have been cured at proper time and at proper stage. Without putting the litigants and courts at hardship and to serve the purpose of justice. In this respect, it is not worthy that in any one of the case at hand, a charge-sheet was directly submitted by the police before the Court of Sessions and on the ground of de novo trial as the Special Judge was not empowered to take cognizance of the offence, if the charge sheet is transmitted back to the police for submitting it to the Magistrate and in turn, if the Magistrate commits again the case to the court of sessions, the accused cannot secure any advantage in re-starting the above said procedure nor it could be said that if such restoration is not ordered the accused will suffer prejudice in his defence. In the other case, as well it is futile to direct the complainant to go before the Magistrate and file a complaint and in pursuance of that complaint, the Magistrate if commits the case, the accused will have to stand trial before the Special Judge i.e. Sessions Judge. In this process, ld. advocate for the complainant contended that the accused would have an opportunity to controvert the issuance of process by the Magistrate. The contention is not tenable for the simple reason that the accused had such an opportunity before the Sessions Judge when the process came to be issued against the accused in the first case. In second case where charge-sheet is submitted by the police directly to the Sessions Court, the objection could not be raised at the stage of framing of charge and, thereafter also, in case, as travelled up to almost five years, it would not be in the interest of justice to start de-novo. Now wherein in the next case instituted upon a complaint, the accused failed to raise this objection in response to issuance of process in response to framing of the charge and, thereafter also. That case also now is aged six years. Therefore, when the Sessions Judge is otherwise competent to try the offence under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 and since the objection could not be raised at the earliest opportunity by the accused, in view of the observation made by the Apex Court in the above said decision in the case of State of M.P. vs. Bhooraji, it would not only futile but not in the interest of justice as said above, to relegate the parties to re-start the battle. The ld. trial judge has rightly considered the circumstances of the case and rejected the above said applications. The question would have been different instead of ld. Special Judge i.e. Sessions Judge, the cognizance would have been taken by any other judge, for example say,

Magistrate, the illegality committed could be said to be absolute and prejudice to the accused would have presumed by the courts of law, and defect would have to be cured. But in this case, the objection came to be raised after six years and evidence is in progress, and otherwise the Special Judge is empowered to take cognizance of the offence complained of, the trial of the case by the ld. Sessions Judge cannot be quashed. Consequently, the order impugned requires no interference.

In the result, both these Criminal Revision Applications stand rejected summarily.

(J.R. VORA, J.)
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